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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

CV 99-01695 #00000219

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMAZON COM, INC ,

Plaintiff,

v

BARNESANDNOBLE COM, INC , and
BARNESANDNOBLE COM LLC,

Defendants

NO C99-1695P

AMAZON COM'S REPLY IN SUPPORT
OF ITS MOTION FOR PROTECTIVE
ORDER TO PREVENT DISCOVERY
FROM JOHN DOOER

I. INTRODUCTION

Plaintiff Amazon com files this reply to Barnesandnoble com, Inc 's and
Barnesandnoble com, LLC's (collectively "Bn com") opposition to Amazon com's Motion for
a Protective Order To Prevent Discovery From John Doerr Bn com argues that it needs
information relating to conception and reduction to practice regarding the '411 patent as its
justification for discovery from Mr Doerr Even a superficial examination of Bn com's

REPLY IN SUPPORT OF MOTION
FOR PROTECTIVE ORDER AND
TO PREVENT DISCOVERY - 1

[24976-0219/SA013190 045]

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arguments, however, reveals that Bn com is simply casting about in a fishing expedition in seeking discovery from Mr Doerr For the reasons stated below, Amazon com requests this Court grant Amazon com's motion and issue a protective order preventing any discovery from Mr Doerr

II. ARGUMENT

Essentially, Bn com puts forward two justifications for seeking discovery from Mr Doerr First, it claims it needs the deposition of Mr Doerr, who is not an inventor of the '411 patent, to obtain information establishing the date of conception and reduction to practice of the '411 patent Second, Bn com asserts that it needs Mr Doerr's deposition to learn why he has no documents in his possession responsive to Bn com's subpoena Neither of these of purported reasons justifies Mr Doerr being subjected to discovery in this action

Regarding alleged evidence of conception and reduction to practice, Mr Doerr's testimony about this is irrelevant Mr Doerr is not an inventor of the patent-in-suit Mr Bezos is Mr Bezos was also the recipient of the February 17, 1997 email from Mr Doerr that Bn com relies upon as support for its deposition of Mr Doerr As shown in its opposition, Bn com had the opportunity to and did in fact inquire of Mr Bezos regarding the subject matter of this email See Bn com Opp at 1-2 Thus, Mr Bezos has already provided his recollection of the email in question Not content with these answers, Bn com now seeks to burden Mr Doerr with similar questions even though Mr Doerr is not an inventor of the patent-in-suit, thus making his testimony irrelevant to conception and reduction to practice Bn com, however, should not be allowed to seek information from Amazon com's directors when it has already had the opportunity to ask the same questions of Mr Bezos and other inventors of the '411 patent, all of whom would have more direct knowledge concerning

1 conception and reduction to practice See, e.g., Thomas v IBM, 48 F 3d 478 (10th Cir
2 1995) (upholding protective order to prevent deposition of IBM's Chairman where record
3 showed that he lacked knowledge of pertinent facts and other employees with more
4 knowledge were made available to be deposed), Salter v Upjohn Co., 593 F 2d 649, 651 (5th
5 Cir 1979) (upholding protective order issued to prevent deposition of defendant's President
6 where record showed he lacked knowledge of facts in dispute and other employees had more
7 direct knowledge)
8

9 Bn com's only justification for this deposition is the unfounded suggestion that
10 Mr Doerr may himself have been the impetus for the invention See Bn com Opp at 3-4
11 The fact that Bn com has no basis for this assertion shows that Bn com is simply on a fishing
12 expedition with regard to its proposed deposition of Mr Doerr
13

14 Furthermore, the email in question is over four years old Mr Doerr has stated in his
15 declaration that he has little recollection of the subject matter of Bn com's document requests
16 It is unlikely that Mr Doerr will have any recollection of the subject matter of an over four-
17 year-old email upon which Bn com so heavily relies as the basis for taking Mr Doerr's
18 deposition This, coupled with the fact that Mr Doerr is not even an inventor of the '411
19 patent, weighs against allowing Bn com to burden Mr Doerr with a deposition in this action
20

21 Bn com further argues that it is entitled to depose Mr Doerr concerning why he has
22 no documents responsive to Bn com's subpoena See Bn com Opp at 3 This purported
23 justification reveals the baseless nature of Bn com's request to depose Mr Doerr Mr Doerr
24 has testified in his declaration that he has no documents responsive to Bn com's subpoena
25 John Doerr Decl , ¶ 4 What Bn com proposes is a deposition of Mr Doerr to inquire of his
26 and his firm's document retention procedures Such questioning will not lead to the discovery
27

1 of admissible evidence in this lawsuit and can only be calculated to harass and embarrass
2
3 Mr Doerr
4

5
6 **III. CONCLUSION**
7

8 Bn com has articulated no legitimate basis for taking the deposition of Mr Doerr
9
10 Mr Doerr is not an inventor of the '411 patent Therefore, his testimony is irrelevant to
11
12 conception and reduction to practice Furthermore, Bn com is not entitled to harass
13
14 Mr Doerr about why he has no documents in his possession responsive to Bn com's
15
16 subpoena Under these circumstances, good cause exists to issue a protective order
17
18 preventing Bn com from subjecting Mr Doerr and the parties to this discovery Accordingly,
19
20 Amazon com respectfully requests this Court to issue a protective order preventing the taking
21
22 of any discovery from Mr Doerr
23

24 Dated this 15th day of November 2001
25

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27 **PERKINS COIE LLP**
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